

(2) *License Exceptions.* Each License Exception described in part 740 of the EAR overcomes this General Prohibition Three if all terms and conditions of a given License Exception are met by the exporter or reexporter.

(3) *Subject to the EAR.* If your item is captured by the foreign-produced direct product control at General Prohibition Three, then your export from abroad is subject to the EAR. You should next consider the steps regarding all other general prohibitions, License Exceptions, and other requirements. If your item is not captured by General Prohibition Three, then your export from abroad is not subject to the EAR. You have completed the steps necessary to determine whether your transaction is subject to the EAR, and you may skip the remaining steps. Note that in summary, items in foreign countries are subject to the EAR when they are:

(i) U.S.-origin commodities, software and technology unless controlled for export exclusively by another Federal agency or unless publicly available;

(ii) Foreign-origin commodities, software, and technology that are within the scope of General Prohibition Two (Parts and Components Reexports), or General Prohibition Three (Foreign-Produced Direct Product Reexports). (However, such foreign-made items are also outside the scope of the EAR if they are controlled for export exclusively by another Federal agency or publicly available.)

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### § 732.3 Steps regarding the ten general prohibitions.

(a) *Introduction.* If your item or activity is subject to the scope of the EAR, you should then consider each of the ten general prohibitions listed in part 736 of the EAR. General Prohibitions One ((Exports and Reexports), Two (Parts and Components Reexports), and Three (Foreign-Produced Direct Product Reexports) (§ 736.2(b) (1), (2), and (3) of the EAR) are product controls that

are shaped and limited by parameters specified on the CCL and Country Chart. General Prohibitions Four through Ten are prohibitions on certain activities that are not allowed without authorization from BIS, and these prohibitions apply to all items subject to the EAR unless otherwise specified (§ 736.2(b) (4) through (10) of the EAR).

(b) *Step 7: Classification.* (1) You should classify your items in the relevant entry on the CCL, and you may do so on your own without the assistance of BIS. You are responsible for doing so correctly, and your failure to correctly classify your items does not relieve you of the obligation to obtain a license when one is required by the EAR.

(2) You have a right to request the applicable classification of your item from BIS, and BIS has a duty to provide that classification to you. For further information on how to obtain classification assistance from BIS, see part 748 of the EAR.

(3) For items subject to the EAR but not listed on the CCL, the proper classification is EAR99. This number is a “basket” for items not specified under any CCL entry and appears at the end of each Category on the CCL.

(c) *Step 8: Country of ultimate destination.* You should determine the country of ultimate destination. The country of destination determines the applicability of several general prohibitions, License Exceptions, and other requirements. Note that part 754 of the EAR concerning short supply controls is self-contained and is the only location in the EAR that contains both the prohibitions and exceptions applicable to short supply controls.

(d) *Step 9: Reason for control and the Country Chart—(1) Reason for control and column identifier within the Export Control Classification Number (ECCN).* Once you have determined that your item is controlled by a specific ECCN, you must use information contained in the “License Requirements” section of that ECCN in combination with the Country Chart to decide whether a license is required under General Prohibitions One, Two, or Three to a particular destination. The CCL and the Country Chart are taken together to

define these license requirements. The applicable ECCN will indicate the reason or reasons for control for items within that ECCN. For example, ECCN 6A007 is controlled for national security, missile technology, and anti-terrorism reasons.

(2) *Reason for control within the Country Chart.* With each of the applicable Country Chart column identifiers noted in the correct ECCN, turn to the Country Chart. Locate the correct Country Chart column identifier on the horizontal axis, and determine whether an “X” is marked in the cell next to the destination in question. Consult § 738.4 of the EAR for comprehensive instructions on using the Country Chart and a detailed example.

(i) An “X” in the cell or cells for the relevant country and reason(s) for control column indicates that a license is required for General Prohibitions One (Exports and Reexports in the Form Received), Two (Parts and Components Reexports), and Three (Foreign-Produced Direct Product Reexports). (See § 736.2 (b)(1), (b)(2), and (b)(3) of the EAR).

(ii) If one or more cells have an “X” in the relevant column, a license is required unless you qualify for a License Exception described in part 740 of the EAR. If a cell does not contain an “X” for your destination in one or more relevant columns, a license is not required under the CCL and the Country Chart.

(iii) Additional controls may apply to your export. You must go on to steps 12 through 18 described in paragraphs (g) to (m) of this section to determine whether additional limits described in General Prohibition Two (Parts and Components Reexports) and General Prohibition Three (Foreign-Produced Direct Product Reexports ) apply to your proposed transaction. If you are exporting an item from the United States, you should skip Step 10 and Step 11. Proceed directly to Step 12 in paragraph (g) of this section.

(3) *License requirements not on the Country Chart.* There are two instances where the Country Chart cannot be used to determine if a license is required. Items controlled for short supply reasons are not governed by the Country Chart. Part 754 of the EAR

contains license requirements and License Exceptions for items subject to short supply controls. A limited number of ECCNs contained on the CCL do not identify a Country Chart column identifier. In these instances, the ECCN states whether a license is required and for which destinations. See § 738.3(a) of the EAR for a list of the ECCNs for which you do not need to consult the Country Chart to determine licensing requirements.

(4) *Destinations subject to embargo provisions.* The Country Chart does not apply to Cuba, Iran, and North Korea; and for those countries you should review the embargo provisions at part 746 of the EAR and may skip this step concerning the Country Chart. For Iraq and Rwanda, the Country Chart provides for certain license requirements, and part 746 of the EAR provides additional requirements.

(5) *Items subject to the EAR but not on the CCL.* Items subject to the EAR that are not on the CCL are properly classified EAR99. For such items, you may skip this step and proceed directly with Step 12 in paragraph (g) of this section.

(e) *Step 10: Foreign-made items incorporating controlled U.S.-origin items and the de minimis rules—(1) De minimis rules.* If your foreign-made item abroad is a foreign-made commodity that incorporates controlled U.S.-origin commodities, a foreign-made commodity that is ‘bundled’ with controlled U.S.-origin software, foreign-made software that is commingled with controlled U.S.-origin software, or foreign-made technology that is commingled with controlled U.S.-origin technology, then it is subject to the EAR if the U.S.-origin controlled content exceeds the *de minimis* levels described in Sec. 734.4 of the EAR.

(2) *Guidance for calculations.* For guidance on how to calculate the U.S.-controlled content, refer to Supplement No. 2 to part 734 of the EAR. Note, U.S.-origin technology controlled by ECCN 9E003.a.1 through a.11, and .h, and related controls, and encryption software controlled for “EI” reasons under ECCN 5D002 (not eligible for *de minimis* treatment pursuant to § 734.4(b) of the EAR) or encryption technology controlled for “EI” reasons under ECCN 5E002 (not eligible for *de minimis*

treatment pursuant to § 734.4(a)(2) of the EAR) do not lose their U.S.-origin when redrawn, used, consulted, or otherwise commingled abroad in any respect with other software or technology of any other origin. Therefore, any subsequent or similar software or technology prepared or engineered abroad for the design, construction, operation, or maintenance of any plant or equipment, or part thereof, which is based on or uses any such U.S.-origin software or technology is subject to the EAR.

(f) *Step 11: Foreign-produced direct product.* The following considerations are appropriate for items abroad and are the same considerations necessary to determine whether a foreign-produced direct product is subject to the EAR under Step 6 in § 732.2(f) of this part.

(1) If your foreign-produced item is described in an entry on the CCL and the Country Chart requires a license to your export or reexport destination for national security reasons, you must determine whether your item is subject to General Prohibition Three (Foreign-Produced Direct Product Reexports) (§ 736.2(b)(3) of the EAR). Your item is subject to this general prohibition if your transaction meets each of the following conditions:

(i) *Country scope of prohibition.* Your export or reexport destination for the direct product is Cuba or a destination in Country Group D:1 (see Supplement No. 1 to part 740 of the EAR) (reexports of foreign-produced direct products exported to other destinations are not subject to General Prohibition Three described in § 736.2(b)(3) of the EAR);

(ii) *Scope of technology or software used to create direct products subject to the prohibition.* Technology or software that was used to create the foreign-produced direct product, and such technology or software that was subject to the EAR and required a written assurance as a supporting document for a license or as a precondition for the use of License Exception TSR in § 740.6 of the EAR (reexports of foreign-produced direct products created with other technology and software are not subject to General Prohibition Three); and

(iii) *Scope of direct products subject to the prohibition.* The foreign-produced

direct products are controlled for national security reasons indicated in an ECCN on the CCL (reexports of foreign-produced direct products not subject to national security controls are not subject to General Prohibition Three).

(2) *License Exceptions.* Each License Exception described in part 740 of the EAR overcomes General Prohibition Three (Foreign-Produced Direct Product Reexports) if all terms and conditions of a given License Exception are met by the exporter or reexporter.

(g) *Step 12: Persons denied export privileges.* (1) Determine whether your transferee, ultimate end-user, any intermediate consignee, or any other party to a transaction is a person denied export privileges (see part 764 of the EAR). It is a violation of the EAR to engage in any activity that violates the terms or conditions of a denial order. General Prohibition Four (Denial Orders) applies to all items subject to the EAR, *i.e.*, both items on the CCL and within EAR99.

(2) There are no License Exceptions to General Prohibition Four (Denial Orders). The prohibition concerning persons denied export privileges may be overcome only by a specific authorization from BIS, something that is rarely granted.

(h) *STEP 13: Prohibited end-uses and end-users.* (1) Review the end-uses and end-users prohibited under General Prohibition Five (End-Use and End-User) (§ 736.2(b)(5) of the EAR) described in part 744 of the EAR. Part 744 of the EAR contains all the end-use and end-user license requirements, and those are in addition to the license requirements under General Prohibitions One (Exports and Reexports), Two (Parts and Components Reexports), and Three (Foreign-produced Direct Product Reexports). Unless otherwise indicated, the license requirements of General Prohibition Five (End-Use and End-User) described in part 744 of the EAR apply to all items subject to the EAR, *i.e.* both items on the CCL and within EAR99. Moreover, the requirements of General Prohibition Five (End-Use and End-User) are in addition to various end-use and end-user limitations placed on certain License Exceptions.

(2) Under License Exception TSU (§740.13 of the EAR), operation technology and software, sales technology, and software updates overcome General Prohibition Five (End-Use and End-User) (§736.2(b)(5) of the EAR) if all terms and conditions of these provisions are met by the exporter or re-exporter.

(i) *Step 14: Embargoed countries and special destinations.* If your destination for any item is Cuba, Iran, Iraq, North Korea, or Rwanda you must consider the requirements of parts 742 and 746 of the EAR. Unless otherwise indicated, General Prohibition Six (Embargo) applies to all items subject to the EAR, i.e. both items on the CCL and within EAR99. You may not make an export or reexport contrary to the provisions of part 746 of the EAR without a license unless:

(1) You are exporting or reexporting only publicly available technology or software or other items outside the scope of the EAR, or

(2) You qualify for a License Exception referenced in part 746 of the EAR concerning embargoed destinations. You may not use a License Exception described in part 740 of the EAR to overcome General Prohibition Six (Embargo) (§736.2(b)(6) of the EAR) unless it is specifically authorized in part 746 of the EAR. Note that part 754 of the EAR concerning short supply controls is self-contained and is the only location in the EAR for both the prohibitions and exceptions applicable to short supply controls.

(j) *Step 15: Proliferation activity of U.S. persons unrelated to exports and reexports.* (1) Review the scope of activity prohibited by General Prohibition Seven (U.S. Person Proliferation Activity) (§736.2(b)(7) of the EAR) as that activity is described in §744.6 of the EAR. Keep in mind that such activity is not limited to exports and reexports and is not limited to items subject to General Prohibition One (Exports and Reexports), Two (Parts and Components Reexports), and Three (Foreign-Produced Direct Product Reexports). Moreover, such activity extends to services and dealing in wholly foreign-origin items in support of the specified proliferation activity and is not limited to items listed on the CCL or included in EAR99.

(2) Review the definition of U.S. Person in part 744 of the EAR.

(k) *Step 16: In-transit.* Shippers and operators of vessels or aircraft should review General Prohibition Eight (In-Transit) to determine the countries in which you may not unload or ship certain items in-transit. General Prohibition Eight applies to all items subject to the EAR, i.e. both items on the CCL and within EAR99.

(l) *Step 17: Review orders, terms, and conditions.* Review the orders, terms, and conditions applicable to your transaction. General Prohibition Nine (Orders, Terms, and Conditions) prohibits the violation of any orders, terms, and conditions imposed under the EAR. Terms and conditions are frequently contained in licenses. In addition, the ten general prohibitions (part 736 of the EAR) and the License Exceptions (part 740 of the EAR) impose terms and conditions or limitations on your proposed transactions and use of License Exceptions. A given license or License Exception may not be used unless each relevant term or condition is met.

(m) *Step 18: Review the "Know Your Customer" Guidance and General Prohibition Ten (Knowledge Violation to Occur).* License requirements under the EAR are determined solely by the classification, end-use, end-user, ultimate destination, and conduct of U.S. persons. Supplement No. 1 to part 732 of the EAR is intended to provide helpful guidance regarding the process for the evaluation of information about customers, end-uses, and end-users. General Prohibition Ten (Knowledge Violation to Occur) prohibits anyone from proceeding with a transaction with knowledge that a violation of the EAR has occurred or is about to occur. It also prohibits related shipping, financing, and other services. General Prohibition Ten applies to all items subject to the EAR, i.e. both items on the CCL and within EAR99.

(n) *Step 19: Complete the review of the general prohibitions.* After completion of Steps described in this section and review of all ten general prohibitions in part 736 of the EAR, including cross-referenced regulations in the EAR, you will know which, if any, of the ten general prohibitions of the EAR apply to

you and your contemplated transaction or activity.

(1) If none of the ten general prohibitions is applicable to your export from the United States, no license from BIS is required, you do not need to qualify for a License Exception under part 740 of the EAR. You should skip the Steps in § 732.4 of this part regarding License Exceptions and proceed directly to the Steps in § 732.5 of this part regarding recordkeeping, clearing the Bureau of Customs and Border Protection with the appropriate Shipper's Export Declaration or Automated Export System record, and using the required Destination Control Statement.

(2) If none of the ten general prohibitions is applicable to your reexport or export from abroad, no license is required and you should skip all remaining Steps.

(3) If one or more of the ten general prohibitions are applicable, continue with the remaining steps.

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EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 732.3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

#### § 732.4 Steps regarding License Exceptions.

(a) *Introduction to Steps for License Exceptions.* If your export or reexport is subject to the EAR and is subject to General Prohibitions One (Exports and Reexports), Two (Parts and Components Reexports), or Three (Foreign-Produced Direct Product Reexports), consider the steps listed in paragraph (b) of this section. If your export or reexport is subject to General Prohibitions Four (Denial Orders), Seven (U.S. Person Proliferation Activity), Eight (In-Transit), Nine (Orders, Terms, and Conditions), or Ten (Knowledge Violation to Occur), there are no License Exceptions available for your export or reexport. If your export is subject to General Prohibition Five (End-Use End-User), consult part 744 of the EAR. If your export or reexport is subject to General Prohibition Six (Embargo), consult part 746 of the EAR for applicable License Exceptions.

(b) *Steps for License Exceptions—(1) Step 20: Applicability of General Prohibi-*

*tions.* Determine whether any one or more of the general prohibitions described in § 736.2(b) of the EAR apply to your export or reexport. If no general prohibition applies to your export or reexport, then you may proceed with your export or reexport and need not review part 740 of the EAR regarding License Exceptions. You are reminded of your recordkeeping obligations related to the clearance of the U.S. Customs Service provided in parts 762 and 758 of the EAR.

(2) *Step 21: Applicability of restrictions on all License Exceptions.* Determine whether any one or more of the restrictions in § 740.2 of the EAR applies to your export or reexport. If any one or more of these restrictions apply, there are no License Exceptions available to you, and you must either obtain a license or refrain from the export or reexport.

(3) *Step 22: Terms and conditions of the License Exceptions.* (i) If none of the restrictions in § 740.2 of the EAR applies, then review each of the License Exceptions to determine whether any one of them authorizes your export or reexport. Eligibility for License Exceptions is based on the item, the country of ultimate destination, the end-use, and the end-user, along with any special conditions imposed within a specific License Exception.

(ii) You may meet the conditions for more than one License Exception. Moreover, although you may not qualify for some License Exceptions you may qualify for others. Review the broadest License Exceptions first, and use any License Exception available to you. You are not required to use the most restrictive applicable License Exception. If you fail to qualify for the License Exception that you first consider, you may consider any other License Exception until you have determined that no License Exception is available.

(iii) License Exceptions TMP, RPL, BAG, AVS, GOV, and TSU authorize exports notwithstanding the provisions of the CCL. List-based License Exceptions (LVS, GBS, CIV, TSR, and APP) are available only to the extent specified on the CCL. Part 740 of the EAR provides authorization for reexports